

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID SABINO QUAIR, III,

Plaintiff,

v.

OFFICER CRU, et al.,

Defendants.

Case No. 1:21-cv-00560-NONE-SKO

ORDER VACATING AMENDED ORDER
GRANTING PLAINTIFF'S MOTION TO
PROCEED *IN FORMA PAUPERIS*

FINDINGS AND RECOMMENDATION
TO DENY PLAINTIFF'S MOTION TO
PROCEED *IN FORMA PAUPERIS*

(Docs. 2 & 4)

FOURTEEN (14) DAY DEADLINE

On April 2, 2021, Plaintiff David Sabino Quair, III ("Plaintiff"), a state prisoner proceeding *pro se*, filed a civil rights action pursuant to 42 U.S.C. § 1983 (Doc. 1) and requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 ("Section 1915") (Doc. 2). On April 8, 2021, the Court granted Plaintiff's application to proceed *in forma pauperis*. (Doc. 4.) As Plaintiff has at least three "strikes" under Section 1915(g), the amended order granting leave to proceed *in forma pauperis* (Doc. 4) will be vacated.

As a state prisoner, Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that "[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state

1 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
2 physical injury.”

3 The Court notes that Plaintiff claims to have filed more than fifty lawsuits while incarcerated.
4 (Doc. 1 at 2.) The Court also takes judicial notice of the following eight United States District Court
5 Cases: (1) *Quair v. CDCR HQ*, No. 2:19-cv-01106-KJM-DB (E.D. Cal.) (dismissed January 21,
6 2021, for failure to state a claim); (2) *Quair v. CDCR-HQ*, No. 5:18-cv-02595 PSG (ADS) (C.D.
7 Cal.) (dismissed January 21, 2021, for failure to state a claim); (3) *Quair v. Speer*, No. 3:20-cv-
8 00222-JD (N.D. Cal.) (dismissed June 22, 2020, for failure to state a claim following failure to file
9 an amended complaint in response to a screening order dismissing complaint for failure to state a
10 claim); (4) *Quair v. San Mateo Cty. Jail*, No. 3:19-cv-08421-JD (N.D. Cal.) (dismissed March 9,
11 2020, for failure to state a claim); (5) *Quair v. Brown*, No. 3:20-cv-00716-JD (N.D. Cal.)
12 (dismissed April 17, 2020, for failure to state a claim following failure to file an amended complaint
13 in response to a screening order dismissing complaint for failure to state a claim); (6) *Quair v. San*
14 *Mateo Cty. Jail*, No. 3:19-cv-08463-JD (N.D. Cal.) (dismissed April 30, 2020, for failure to state
15 a claim); (7) *Quair v. United States Dist. Ct.*, No. 8:19-cv-02392-JLS-DFM (C.D. Cal.) (dismissed
16 February 28, 2020, as frivolous); and (8) *Quair v. CDCR-Office of Internal Affairs*, No. 3:19-cv-
17 03136-JD (N.D. Cal.) (dismissed November 6, 2019, for failure to state a claim following failure to
18 file an amended complaint in response to a screening order dismissing complaint for failure to state
19 a claim).¹ Each of these eight cases constitutes a “strike” under Section 1915(g) because the cases
20 were dismissed either as frivolous or for failure to state a claim before Plaintiff initiated the current
21 action on April 2, 2021. Thus, as Plaintiff has at least three strikes, he is precluded from proceeding
22 *in forma pauperis* unless, at the time he filed his complaint, he was under imminent danger of serious
23 physical injury. *See* 28 U.S.C. § 1915(g).

24 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy the
25 imminent danger exception to Section 1915(g).² *Andrews v. Cervantes*, 493 F.3d 1047, 1053–55
26 (9th Cir. 2007). Plaintiff raises claims regarding denial of access to courts, retaliation, and failure

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28 ¹ The Court may take judicial notice of court records. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

² The Court expresses no opinion on the merits of Plaintiff’s claims.

1 to safeguard his property. (Doc. 1.) There are no allegations in the complaint that Plaintiff was in
2 any imminent danger of serious physical injury at the time the complaint was filed. (See Doc. 1.)
3 Thus, Plaintiff has not satisfied the exception from the “three strikes” bar under 28 U.S.C. § 1915(g),
4 and Plaintiff must pay the \$402.00 filing fee if he wishes to litigate this action.

5 Accordingly, the Court hereby VACATES the amended order granting Plaintiff’s
6 application to proceed *in forma pauperis* (Doc. 4).

7 Further, it is HEREBY RECOMMENDED that:

- 8 1. The motion to proceed *in forma pauperis* (Doc. 2) be DENIED, pursuant to 28 U.S.C.
9 § 1915(g); and
- 10 2. Plaintiff be ORDERED to pay the \$402.00 initial filing fee in full to proceed with
11 this action.

12 These Findings and Recommendations will be submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
14 **days** after being served with these Findings and Recommendations, Plaintiff may file written
15 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
16 Findings and Recommendation.” Plaintiff is advised that the failure to file objections within the
17 specified time may result in the waiver of the “right to challenge the magistrate’s factual findings”
18 on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923
19 F.2d 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: **April 20, 2021**

23 /s/ Sheila K. Oberto
24 UNITED STATES MAGISTRATE JUDGE
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